FEDERATION REPORTS

FONG HONG SIUM v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Briggs, J.) October 26, 1950]

[Kota Bharu — Criminal Appeal No. 42 of 1950]

Criminal trial — Interpreter — Not a sworn interpreter — Accused's right to speak in any language — Duty of Court.

There is no exception to the general rule that an accused person is entitled to have proceedings interpreted to him in any language which he desires to use. He cannot be obliged to use even the language which is his native language, if he does not want to. It is the duty of the Court to find an interpreter for the language required and the Court must be satisfied that the interpreter is competent to do his work efficiently.

CRIMINAL APPEAL.

Briggs, J. : — In this case the appellant, who is a Hainanese, was tried in the Sessions Court. In the absence of a Court interpreter able to speak Hainanese, the chief clerk of the High Court assisted the Sessions Court as interpreter. He is not a sworn interpreter, and was not sworn in as a special interpreter for the purpose of the case. He spoke in Hokkien, in which he is fluent, and he said, on affirmation before me, that the appellant also spoke, and is fluent, in Hokkien. He added that he did not himself speak Hainanese and that he did not know why a Hainanese interpreter was not obtained. He was cross-examined by the appellant, and admitted that the appellant's Hokkien was "poor". In answer to the Court, he also said that he had not told the Court below that the appellant had spoken first in Hainanese and then in Hokkien.

The difficulties of the Subordinate Courts as regards interpretation in the more unusual languages are serious, and I should be reluctant to do anything to increase them. There are, however, certain rules which must be observed. I am not aware of any exception to the general rule that an accused person is entitled to have proceedings interpreted to him in any language which he desires to use. I think it doubtful whether he can be obliged to use even the language which is his native language, if he does not want to. It is the duty of the Court to find an interpreter for the language required, and the Court must be satisfied that the interpreter is competent to do his work efficiently. If the interpreter is an official interpreter of a Court, or a certified interpreter in the employment of any Government in the Federation, and if he is "engaged in the performance of his duties", then by virute of section 4(2) of the Oaths and Affirmations Ordinance, 1949, it is not necessary to swear the interpreter. In any other case, however, it is a statutory requirement that he should be sworn (see section 4(1)(b) of the Ordinance). Even though he is interpreting in a language in which he is not officially qualified, a Court interpreter will be "engaged in the performance of his duties", since it is the duty of such interpreters to do the work of interpretation in all languages in which they are competent to interpret, notwithstanding the lack of an official qualification. It is a general rule of practice that, unless the interpreter is officially qualified in the language, the Court should ascertain that he can understand, and be understood by the accused with sufficient ease to enable the proceedings to be properly conducted. The most convenient method is to allow him to talk for a few moments with the accused and to enquire whether they can so understand one another. When the Court is satisfied of this, it should be incorporated in the record before the evidence is recorded. There are, of course, cases when this would be quite unnecessary, for example, if both the accused and interpreter are Siamese and are speaking Siamese and the interpreter is fluent in English. When, either by reason of the interpreter being officially qualified or in such manner as is described above, it is established that the interpreter is competent to do his work as such, he must then, unless exempted under the provisions of section 4(2) of the Ordinance, be sworn, and an omission to do this is an illegality. As the interpreter in this case was not an official Court interpreter, or a certified interpreter in the employment of Government, the omission to swear him was an incurable defect, and it was on this ground that I was obliged to allow the appeal and set aside the conviction and sentence. If the interpreter had sworn to his ability to understand and be understood by the appellant, and had been duly sworn as Interpreter, the appellant would have found it very difficult to persuade me that he was not adequately interpreted.

Appeal allowed.

SEET AH ANN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Abbott, J.) November 14, 1950]

[Malacca — Criminal Appeal No. 28 of 1950]

Criminal Procedure Code, s. 187 — Withdrawal of charge — Discharge of accused — Whether discharge should amount to acquittal — When co-accused person can be called as a witness.

In this case the appellant was charged with having abetted the offence of receiving illegal gratification under section 161 of the Penal Code and one Yap Fook Cheong was charged with receiving the said illegal gratification. At the trial, the Deputy Public Prosecutor asked the Court to discharge the appellant in circumstances not

amounting to an acquittal and informed the Court that the appellant would be called as a witness against Yap Fook Cheong. The appellant was thereupon discharged and he was subsequently called as a witness in the proceedings against Yap Fook Cheong, which terminated in an acquittal.

Held, (1) that the power given by section 187 of the Criminal Procedure Code enabling the discharge of accused persons without acquitting them is a power which should be exercised only sparingly and grudgingly and only used where the Court is satisfied, for good cause shown, that the public interest insistently demands that it be used; (2) that the established practice in England that a co-accused person is called as a witness only after he has been dealt with for his offence or after he has been acquitted of it, should be followed in Malaya.

CRIMINAL APPEAL from Sessions Court, Malacca.

C. S. Jayaswal for the appellant.

Hugh Shepherd (D.P.P.) for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — This is an appeal against an order made in the Malacca Sessions Court. I will set out the circumstances in which the order came to be made.

On the 13th of June, 1950, the appellant was brought before the lower court charged with having abetted an offence against section 161 of the Penal Code. The appellant pleaded not guilty and the hearing was adjourned after the police officer, who was then in charge of the prosecution, had informed the court that the appellant would be called as a witness against the principal offender — one Yap Fook Cheong — who was not before the Court on that day. On the 28th of August Yap Fook Cheong, but not the appellant, appeared before the court and the evidence of one witness was heard. It seems that there was some urgency about the matter as the witness was upon the eve of taking his departure from Malaya for reasons of health. After the evidence of that witness had been recorded the case against Yap Fook Cheong was adjourned. Thereafter both prosecutions were taken over by the Deputy Public Prosecutor for the Settlement of Malacca and upon the 6th of September the appellant and Yap Fook Cheong appeared together in the dock to face the charges that had been made against them. At this hearing the Deputy Public Prosecutor asked that the evidence recorded at the proceedings against Yap Fook Cheong on the 28th of August be read in the presence of the appellant and it was read. The Deputy Public Prosecutor, however, seems to have thought better of his request and stated that, since the evidence which had been read had been recorded in the absence of the appellant, it was his opinion that the trial of the appellant could not proceed. Whereupon the Deputy Public Prosecutor asked the court to discharge the appellant in circumstances not amounting to an acquittal while, at the same time, he informed the court that the appellant would be called as a witness against Yap Fook Cheong. The appellant, through his counsel, asked that the case be finally disposed of, but the learned President of the Sessions Court made the order as requested by the Deputy Public Prosecutor. It is against that order that the appellant now appeals. Upon the same day the Deputy Public Prosecutor caused the appellant to be summoned as a witness against Yap Fook Cheong. Upon the 4th of October the proceedings against Yap Fook Cheong terminated in his acquittal.

Hence the position is that the appellant remains charged with having abetted an offence in respect of which the person charged as the principal offender has been found not guilty — a wholly unsatisfactory position.

In the view of this Court the power, given by section 187 of the Criminal Procedure Code, enabling the discharge of accused persons without acquitting them is a power which should be exercised only sparingly and grudgingly and only used where the Court is satisfied, for good cause shown, that the public interest insistently demands that it be used. This power does not exist in England. It is difficult to imagine circumstances in which it can be right and, as such, just to leave an individual for an indefinite period with a criminal charge hanging over him. In this particular case it appears that the prosecution contemplated just such an indefinite period for when, during the course of the arguments before me, I asked the Deputy Public Prosecutor whether he intended to resume the prosecution of the appellant he informed me in terms that he would not commit himself to say either way.

I pause here to say that it is a well-established practice in the criminal courts of England that a co-accused person is called as a witness only after he has been dealt with for his offence or after he has been acquitted of it. Notwithstanding the provisions of section 187 of the Criminal Procedure Code, I can conceive of no circumstances in Malaya which could justify any departure from the English practice to which I have referred. In the present case it could have been suggested that the withdrawal of the case against the appellant, while holding the Sword of Damocles over his head as to whether the proceedings would be resumed or not, was done in order to induce him to give evidence satisfactory to the Crown — but I hasten to add that I do not impute any lack of integrity on the part of the Deputy Public Prosecutor in asking

for the order to be made, nor, of course, do I impute any impropriety on the part of the President of the Sessions Court in making it.

The order must be set aside and, in substitution for it, there shall be an order of this Court that the appellant be discharged and acquitted.

Order set aside.

Appellant discharged and acquitted.

MOHAMAD KASSAN BIN HASSAN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Whitton, Ag. J.) October 25, 1950]

[Seremban — Criminal Appeal No. 25 of 1950]

Penal Code, s. 403 — Criminal Procedure Code, s. 174 — Alteration of charges at close of prosecution case — Admissibility of evidence — Whether improper admission of evidence has occasioned a failure of justice — Whether re-trial should be ordered — Criminal Procedure Code, s. 428.

In this case the appellant was originally charged with the following charges :—

"(1) That you between 15th May, 1949 and 23rd February, 1950 at Messrs. Guan Hoe & Co., Ltd. petrol pumping station, No. C, Fort Road, Malacca, dishonestly misappropriated to your own use certain movable property to wit petrol thus committing an offence punishable under section 403 of the Penal Code;

(2) That you between 2nd June, 1949 and 3rd February, 1950 at Malacca, cheated the Department of Public Relations of the Federation of Malaya by submitting various returns setting out that certain petrol had been used in Motor Vehicle No. B 5846 whereas it had been used in motor car No. BA 2910, with the knowledge that you were likely thereby to cause wrongful loss to a person to wit the aforesaid Department, whose interest in the transaction you were bound by law to protect thus committing an offence under section 418 of the Penal Code;

(3) That you between 15th May, 1949 and 23rd February, 1950 at Messrs. Guan Hoe & Co., Ltd. petrol pumping station at No. C, Fort Road, Malacca, abetted the offence of failing by Guan Hoe & Co., Ltd. to observe the first condition attached to a Retailer's Licence issued to him on the 18th October 1947 under the Fuel and Lubricants Control Proclamation No. 41, by requesting that company to deliver petrol into the tank of motor car No. BA 2910 whereas Authorisation Notes were presented with respect to motor vehicle No. B 5846, which offence was committed in consequence of the abetment, thus committing an offence unler section 109 of the Penal Code and section 4 of the Fuel and Lubricants Control Proclamation, and punishable under section 19 of the aforesaid Proclamation."

At the close of the prosecution the learned President of the Sessions Court held that the charges were bad for multiplicity and he amended the charges as follows :—

"(1) That you on or about the 16th day of May 1949 at Messrs. Guan Hoe & Co., Ltd. petrol pumping station, No. C, Fort Road, Malacca, dishonestly misappropriated certain movable property to wit one gallon of petrol belonging to Department of Public Relations of the Federation of Malaya and thereby committed an offence punishable under section 403 of the Penal Code;

(2) That you on or about the 20th day of May 1949 at Messrs. Guan Hoe & Co., Ltd. petrol pumping station, No. C, Fort Road, Malacca, dishonestly misappropriated certain movable property to wit one gallon of petrol belonging to Department of Public Relations of the Federation of Malaya and thereby committed an offence punishable under section 403 of the Penal Code;

(3) That you on or about the 21st day of May 1949 at Messrs. Guan Hoe & Co., Ltd. petrol pumping station, No. C, Fort Road, Malacca, dishonestly misappropriated certain movable property to wit two gallons of petrol belonging to Department of Public Relations of the Federation of Malaya and thereby committed an offence punishable under section 403 of the Penal Code."

The appellant was convicted on the amended charges.

Held, (1) that some of the evidence which had been brought against the appellant on the original charges, dealing with events before May 1949 were inadmissible on the amended charges which related only to the month of May 1949; (2) that in the circumstances of the case the improper admission of evidence had caused a failure of justice; (3) that on the facts of the case it was inequitable to order a re-trial and therefore the convictions must be quashed.

CRIMINAL APPEAL from Sessions Court, Malacca.

A. J. Bostock-Hill (*C. S. Jayaswal* with him) for the appellant.

Tungku Abdul Rahman (D.P.P.) for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Whitton, Ag. J. : —The appellant in this case was convicted by the President of the Sessions Court, Malacca, on three charges under section 403 Penal Code, and was sentenced to six months' rigorous imprisonment on each charge, sentences to run concurrently. The charges read as follows :—

"(1) That you on or about the 16th day of May 1949 at Messrs. Guan Hoe & Co., Ltd. petrol pumping station, No. C, Fort Road, Malacca, dishonestly misappropriated certain movable property to wit one gallon of petrol belonging to Department of Public Relations of the Federation of Malaya and thereby committed an offence punishable under section 403 of the Penal Code;

(2) That you on or about the 20th day of May 1949 at Messrs. Guan Hoe & Co., Ltd. petrol pumping station, No. C, Fort Road, Malacca, dishonestly misappropriated certain movable property to wit one gallon of petrol belonging to Department of Public Relations of the Federation of Malaya and thereby committed an offence punishable under section 403 of the Penal Code;

(3) That you on or about the 21st day of May 1949 at Messrs. Guan Hoe & Co., Ltd. petrol pumping station, No. C, Fort Road, Malacca, dishonestly misappropriated certain movable property to wit two gallons of petrol belonging to Department of Public Relations of the Federation of Malaya and thereby committed an offence punishable under section 403 of the Penal Code."